

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Appeal from Order No. 302 of 2004

Date of decision: 11th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 302 of 2004

1. Krishna Pad Vishwas S/o Sri Vimal Vishwas.
2. Smt. Parul Vishwas W/o Sri Krishna Pad Vishwas.
3. Kamal Vishwas (minor) S/o Sri Krishna Pad Vishwas.
4. Pradeep Vishwas (minor) S/o Sri Krishna Pad Vishwas
All R/o Transit Camp, Tehsil Kichha,
District Udham Singh Nagar.
Nos. 3 & 4 are minors and under the guardianship
of their father and natural guardian
Sri Krishna Pad Vishwas. Appellants

Versus

1. Motor Accident Claims Tribunal/
Addl. District Judge, Haldwani, Nainital.
2. Manohar Singh S/o Sri Maan Singh.
3. New India Assurance Co. Ltd.,
through Regional Manager,
Regional Office at Haldwani,
District Nainital.
4. Mukhtyar Singh S/o Sri Makhan Singh,
R/o Baradari Farm, Vilaspur,
District Rampur (U.P.). Respondents

Mr. D.C.S. Rawat, Advocate for the appellants.

None for respondents Nos. 1, 2 & 4.

Mr. T.A. Khan, Advocate for respondent No.3.

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.**

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Haldwani, District Nainital vide Award dated 16.06.2004 passed in Motor Accident Claim Petition No. 2 of 2003.

2. The claimants, who are unfortunate parents and brothers of deceased Kalyan Vishwas, claimed compensation of Rs. 8,65,000/- for his death in the motor accident on 02.12.2002 when the scooter, on

which he was travelling as a pillion rider, was dashed by the offending vehicle Dumper / Truck bearing registration No. UA004/1659 resulting in his instantaneous death on the spot itself. On the report of Mukhtyar Singh about the accident, a case was registered against the driver of the Dumper / Truck at Police Station Haldwani at Crime No. 3221 of 2002. The claimants pleaded that deceased Kalyan Vishwas was aged about 20 years and used to earn Rs. 2,200/- per month as Designer in a 'Rajai Centre'.

3. The owner and the insurer of the offending vehicle Dumper / Truck contested the claim. The owner of the offending vehicle Dumper / Truck denied his liability to pay compensation to the claimants on the plea that as the Dumper / Truck was insured at the time of the accident, the liability to pay compensation was that of the Insurance Company. The insurer, on the other hand, denied its liability to pay compensation to the claimant on the plea that as the owner of the Scooter was not impleaded, the claim petition was liable to be dismissed.

4. The claimants examined PW1 Krishna Pad Vishwas and PW2 Mukhtyar Singh in support of their claim, whereas the owner and the insurer of the offending vehicle Dumper / Truck did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that Kalyan Vishwas died on account of the injuries sustained by him in the motor accident on 02.12.2002; the driver of the offending vehicle Dumper / Truck was responsible for the accident; and the insurer of the Dumper / Truck was liable to pay compensation to the claimants.

6. As the Tribunal found that the evidence led by the claimants about the income of the deceased was not reliable, the Tribunal assessed his income at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section

163-A of the Motor Vehicles Act. By deducting $\frac{1}{3}^{\text{rd}}$ of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of '15', the compensation was worked out to Rs. 1,50,000/-. The Tribunal awarded further sums of Rs. 2,000/- towards Funeral Expenses and Rs. 2,500/- for Loss of Estate. Thus, a total sum of Rs. 1,54,500/- was awarded as compensation to the claimants for the death of Kalyan Vishwas in the motor accident. The Tribunal, further, directed the insurer of the Dumper / Truck to pay interest on the amount of compensation at the rate of 9% per annum in the event of failure to make payment within a period of one month from the date of the Award.

7. Mr. D.C.S. Rawat, the learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 15,000/- per annum only; in awarding low compensation of Rs. 1,54,500/-; and in not awarding any interest on the amount of compensation and in directing only a conditional payment of interest in the event of failure of the Insurance Company to make the payment to the claimants within a period of one month from the date of the Award.

8. Mr. T.A. Khan, the learned counsel for respondent No. 3 New India Assurance Company Ltd., on the other hand, though supported the Award, submitted that the Tribunal has erred in selecting the higher multiplier of '15'.

9. The findings recorded by the Tribunal that Kalyan Vishwas died on account of the injuries sustained by him in the motor accident on 02.12.2002; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Dumper / Truck; and the

insurer of the Dumper / Truck was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed nay appeal against the Award.

10. The assessment of the income of the deceased by the Tribunal at Rs. 15,000/- per annum on the basis of the notional income requires reconsideration. The notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident in the present case took place in the year 2002. If the depreciation in the purchase value of the rupee is taken into consideration, the notional income of Rs. 15,000/- per annum, in the year 2002, would come to Rs. 30,000/- per annum. Deceased Kalyan Vishwas was aged about 20 years on the date of the accident. Even otherwise, in the years 2002, a young boy aged about 20 years, even if working as an unskilled labourer could have easily earned a sum of Rs. 2500/- per month @ of Rs. 80-90/- per day. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum.

11. As deceased Kalyan Vishwas was aged about 20 years only and was living with his parents and two younger brothers, he may not be in the habit of spending much on himself. We, therefore, deem it proper to deduct a sum of Rs. 8,000/- only from the income of the deceased of Rs. 30,000/- as his personal expenses. The claimants' dependency, therefore, is assessed at Rs. 22,000/- per annum.

12. The multiplier of '15' selected by the Tribunal is certainly on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another**, reported in (2003) 8 SCC 731, wherein it has been held that, in a case, where the claimants are parents of the deceased, the multiplier should never exceed '10'. In our opinion, in the present case too, the appropriate multiplier would be '10' only.

13. By multiplying the annual dependency of Rs. 22,000/- with the multiplier of '10', the compensation works out to Rs. 2,20,000/-. The claimants are further entitled to Rs. 2,000/- towards Funeral Expenses and Rs. 3,000/- for Loss of Estate. Thus, the claimants, in all, are entitled to receive a total sum of Rs. 2,25,000/- as compensation for the death of Kalyan Vishwas in the motor accident.

14. That apart, in a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal/ Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in (2005) 6 Supreme Court Cases 236, observed in para 10:

“10. Much of the calculation necessarily remains in the realm of hypothesis “and in that region arithmetic is a good servant but a bad master” since there are so often many imponderables. In every case “it is the overall picture that matters.” and the court must try to assess as best as it can the loss suffered.”

15. The compensation of Rs. 2,25,000/- when examined in the context to the above-quoted dictum of the Apex Court in the case of S. Rajapriya (supra), we are satisfied, is just and proper compensation in the facts and circumstances of the present case.

16. The Apex Court in the case of **Manju Devi and another Vs. Musafir Paswan and another** reported in 2005 (1) TAC 609 (SC), while considering as to what would be just and proper compensation to the parents for the death of their son aged about 13 years, found compensation of Rs. 2,25,000/- to be just and proper compensation.

17. The Tribunal has erred in not awarding any interest to the claimants on the amount of compensation and in directing only a conditional payment of interest in the event of failure of the Insurance Company to pay the compensation within a period of one month from the date of the Award. The Tribunal, thereby, has deprived the claimants of the amount of interest, which was otherwise payable to them. The claim petition was filed on 06.01.2003 and the amount of compensation of Rs. 1,54,500/- awarded by the Tribunal was paid to the claimants within a period of one month from the Award dated 16.06.2004. Thus, the claimants are entitled to receive interest on the amount of Rs. 1,54,500/- awarded by the Tribunal for the period from 06.01.2003 to 16.06.2004 and on the enhanced amount of Rs. 70,500/- ($2,25,000 - 1,54,500 = 70,500$) for the period between 06.01.2003 to 11.09.2006. We, with a view to avoid any delay in the computation of the amount of interest for the above-mentioned period by the Claims Tribunal, deem it proper to quantify the amount of interest ourselves. Taking all the relevant factors into consideration, we quantify the amount of interest at Rs. 20,000/-.

18. The claimants, therefore, become entitled to Rs. 2,25,000/- towards Compensation and Rs. 20,000/- towards Interest on the above amount of compensation.

19. For the foregoing reasons, the appeal filed by the appellants under Section 173 of the Motor Vehicles Act is allowed in part. The compensation of Rs. 1,54,500/- awarded by the Tribunal is enhanced to Rs. 2,25,000/-. Respondent No. 3 New India Assurance Company Ltd. is directed to pay a sum of Rs. 20,000/- towards Interest on the above amount of compensation. Consequently, Respondent No. 3 New India Assurance Company Ltd. is directed to pay the enhanced amount of Rs. 70,500/- and the amount of interest of Rs. 20,000/- to the claimants within a period of two months from today.

20. No order as to costs.

(Rajesh Tandon, J.)	(Rajeev Gupta, C. J.)
11.09.2006	11.09.2006

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